

REMARKS

Applicant respectfully requests reconsideration in view of the amendment and following remarks. The applicant has amended claim 8 in order to overcome the 35 U.S.C. 112, second paragraph rejection. Support for newly added claim 20 can be found in the original claims 1 and 8.

Claims 8 is rejected under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-3, 6-11, and 14-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 6,541,087 (“Pophusen”). Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pophusen and U.S. Publication No. 2002/0000683 (“Sears”) as motivated by EP Publication No. 920808 (“Toshiaki”). The applicant respectfully traverses these rejections.

35 U.S.C. 112 Second Paragraph Rejection

Claims 8 is rejected under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has amended claim 8 in order to overcome the 35 U.S.C. 112, second paragraph rejection. For the above reasons, this rejection should be withdrawn.

35 U.S.C. 102(b) Rejection

Claims 1-3, 6-11, and 14-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pophusen. The Examiner argues under item 10 of the Office Action that natural fibers mentioned as feature g) of claim 1 may also be present in the optional further layers and that, therefore, feature g) itself has to be interpreted as being optional.

However, the applicant believes that this interpretation is clearly wrong. The applicant's claimed invention requires a), d), e) and g). Feature g) requires at least one of the layers comprises natural fibres having a fibre length in the range of from 5 to 10,000 μm and/or a natural fibre mixture of various fibre types and/or fibre lengths. Claim 1 does not state that feature g) is an optional feature.

The Examiner's interpretation would not only be in clear conflict with the intention of claim 1 itself, but also with the teaching of the whole application. In the whole application, it is in fact the key point to Incorporate said natural fibers in one of the layers of the tubular casing. This is explicitly disclosed on page 5, lines 4 to 7 of the application where it is explained as follows:

The present invention achieves this object by providing an at least three-layered, preferably five-layered, co-extruded, tubular, biaxially stretched, fiber-modified seamless tubular casing, at least one of the layers comprising natural fibers having a fiber length in the range of from 5 to 10,000 μm . (emphasis added)

Therefore, as stated above feature g) in claim 1 is not an optional feature but mandatory for the at least three-layered tubular casing. Only in those cases where an optional additional layer is present in the tubular casing, the natural fibers mentioned under feature g) may be present in this additional layer.

Since Pophusen does not teach or disclose the presence of such natural fibers in at least one of the layers of such tubular casings, the subject matter of the pending claims is novel over Pophusen. For the above reasons, this rejection should be withdrawn.

35 U.S.C. 103(a) Rejection

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pophusen and Sears as motivated by Toshiaki.

Under items 11 to 16 of the Office Action, it is argued that claims 4 and 5 which further specify the natural fibers as cellulose fibers are obvious in the light of Pophusen and Sears as motivated by Toshiaki. As stated above, Pophusen does not teach or disclose the presence of such natural fibers in at least one of the layers of such tubular casings.

Sears discloses a composite material containing cellulosic pulp fibers dispersed in a matrix, wherein the matrix comprises a polymeric material, e.g. polyamide. Sears further discloses that the composite may preferably comprise greater than 1 wt.-% and less than 60wt.-% cellulosic pulp fibers (see paragraph no. [0016] of Sears). A composite material containing cellulosic pulp fibers can be used for extrusion methods, e.g. in injection-molding applications (see paragraph [0002] of Sears). The applicant believes that Sears relates to a totally different technical field, compared to the present application. The disclosure of Sears is totally silent to food casings, is totally silent to multi-layered food casings, lies nothing to do with biaxially stretched seamless tubular casings, but fiber reinforced plastic material which are intended to be used in injection-molding applications. Sears is therefore considered to be clearly non-analogous art and would not be used by persons skilled in the art when dealing with casings for food stuff.

Toshiaki seems not to be appropriate to suggest the subject matter of pending claims since Toshiaki only discloses a single-layer casing comprising a mixture of polyamide/cellulose acetate propionate and cellulose powder (see paragraph no. [0009] and examples 1 and 2). In

contrast thereto, the present invention relates to a multi-layered seamless tubular casing. Furthermore, Toshiaki just teaches to use a mixture of polyamide and cellulose acetate propionate in case that cellulosic material is to be comprised within a casing. The applicant believes that a person of ordinary skill in the art would be prevented from using the teaching of Toshiaki to merely mix cellulosic material and polyamide since Toshiaki explicitly requires to use a mixture of polyamide and cellulose acetate propionate in case that cellulosic material should be included in layers of a casing. Consequently, there is no hint in Toshiaki to exclude the cellulose acetate propionate. The applicant does not require the use of cellulose acetate propionate in the claimed invention.

Furthermore, the applicant's examples establish the criticality of using the fibers. See comparative example in which no fibers are used and compare to examples 1-6 that use fibers in at least one layer. For the above reasons, this rejection should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 15551-00004-US from which the undersigned is authorized to draw.

Dated: July 7, 2008

Respectfully submitted,

Electronic signature: /Ashley I. Pezzner/
Ashley I. Pezzner
Registration No.: 35,646
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P. O. Box 2207
Wilmington, Delaware 19899-2207
(302) 658-9141
(302) 658-5614 (Fax)
Attorney for Applicant